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Delaware makes forceful argument in court to stop Army Corps of Engineers from dredging

Wilmington, DE – Today, the Delaware Attorney General's office presented oral arguments before the United States District Court for the District of Delaware in its October 30, 2009 complaint for injunctive and declaratory relief to order the U.S. Army Corps of Engineers ("Corps") to comply with Delaware law prior to dredging in Delaware waters.

"Today, we argued that state and federal law requires the Army Corps of Engineers to receive state approval before deepening the Delaware River within Delaware's boundaries," Attorney General Biden stated. "Therefore, we asked the United States District Court for the District of Delaware court to issue a preliminary injunction to stop the Corps' dredging activities until it applies for and obtains the required Delaware permits. We thank the Court for expeditiously reviewing this matter."

A decision by District Court Judge Sue Robinson is expected in the coming weeks.

On October 23, 2009, the Corps notified Delaware that it intends to proceed with a plan to dredge the shipping channel of the Delaware River despite failing to first obtain required Delaware environmental permits. The proposed project would deepen the channel by at least five feet from the mouth of the Delaware Bay to the ports of Philadelphia and Camden. Much of this project lies partially or wholly within Delaware territory.

Delaware's Subaqueous Lands and Wetlands Acts require a federal agency to secure state approval before conducting the type of dredging proposed by the Corps. The law makes clear that before issuing permits, the State must weigh the environmental harms posed by potential water pollution. Moreover, the Corps is required by the federal Clean Water Act to comply with State water pollution requirements and to obtain necessary state permits before it can begin any dredging project that could result in polluted discharge or runoff.

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